

August 17, 1995

Arthur S. Katz
Executive Director
NYS Association of Wholesale Marketers
and Distributors
211 East 43rd Street, Suite 1101
New York, NY 10010-4707

Dear Mr. Katz:

Mr. Kewley asked that I respond to your inquiry of August 15, 1995 concerning the application of the prepaid sales tax on cigarettes to certain activities of the members of your association.

Your questions concern the procedures for the application of the prepaid sales tax on cigarettes to (1) cigarettes sold two packs for the price of one, (2) cigarettes sold in packs of 25, and (3) returns.

Two for One Sales

When a person sells cigarettes two packs for the price of one there must be sufficient stamps purchased and affixed to cover each pack being sold. Thus, each 20 pack of cigarettes will have \$0.14 prepaid sales tax paid and passed through down to the retail vendor. Assuming the wholesaler is selling the two pack to the retailer at the cost of a single pack, the procedures would be as follows: The wholesaler would issue an invoice to the customer showing a sale of x number of packs of cigarettes and confirm that it is passing through \$0.14 prepaid sales tax in each pack of cigarettes (the total amount of prepaid sales tax for all the packs could also be totaled on the invoice). The amount of the invoice would be for whatever price the seller is charging for the two pack (presumably something near the cost for an individual pack or one half the cost of the total number of packs it is selling) plus the prepaid sales tax based on the total number of packs transferred. For instance, if the regular price for a carton of cigarettes were \$20.00, the wholesaler would sell two cartons to a retailer for \$22.80 (\$20.00 for the cigarettes and \$2.80 in prepaid sales tax, which represents \$0.14 a pack for twenty packs). The retailer now sells the two packs for the price of one pack and collects retail sales tax based on the sales price (which is the price for a

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single pack). The retailer is permitted a credit for prepaid sales tax passed through to it in the amount of \$0.28 (two packs at \$0.014 prepaid tax a pack) on the sale of the two for ones.

Cigarettes sold in packs of 25

The prepaid sales tax is imposed at the rate of \$0.175 per pack of twenty-five cigarettes. This amount of prepayment is imposed notwithstanding that the price (without regard to the prepaid tax) at which a twenty-five pack of cigarettes is sold might not be different from the price at which a twenty pack is sold. Thus, regardless of the wholesale price or the ultimate retail price, the prepayment required to be paid and passed through on a 25 pack of cigarettes is \$0.175 (\$1.75 per carton). When the retailer sells the twenty-five pack, it charges the customer retail sales tax based upon whatever the retailer's normal retail sales price is (which is determined without regard to the amount of the prepayment). When the retailer takes credit on its sales tax return for the amount of its prepayments it will be entitled to \$0.175 credit per twenty-five count pack (as opposed to the \$0.14 per pack it had passed through to it on twenty count packs). While the prepaid tax is required to be paid at the time the cigarette tax stamps are purchased and passed through to the purchaser on sales from agents to wholesalers to retail vendors, it should not be included in the retail selling price. It is merely a prepaid withholding of some portion of the tax ultimately due on the retail sale of the cigarettes and is to be taken as a credit by the retail vendor against its sales tax liability on its return. The prepaid sales tax does not affect nor become a part of the price at which the retail vendor will sell the cigarettes to a consumer, nor does it effect the amount of retail sales tax the vendor must collect from the consumer based upon the retail vendor's selling price for the cigarettes. Likewise it will not effect the dollar amount of taxable sales a vendor will report on its sales tax return nor the amount of tax due in respect of such sales. It will, however, likely effect the amount of tax a retail vendor will pay with its return since, after taking the credit for the amount of prepaid tax it had passed through to it, the vendor will likely have less net tax to remit.

Returns of Cigarettes

It is our understanding that where cigarettes have for some reason become unfit for use, industry practice is to take back such cigarettes from the vendor and to replace them with a like amount of presumably fit cigarettes. We understand that such transactions are an even wash situation, x cartons replacing x cartons.

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No new invoice is made, no additional monies or costs are incurred, and no refunds or rebates are given. In such instance the retail vendor still has the original invoice and certification stating the amount of prepaid tax that was passed through on the original purchase of cigarettes which cigarettes have now been evenly replaced. The retail vendor is entitled to claim its credit. The retailer has not been issued a new or duplicate invoice and certification for the replacement cigarettes so there is not the possibility of the retailer claiming double credit.

The agent files Form CG-114, Claim for Redemption/Refund of Cigarette Tax Stamps and Prepaid Sales Tax, to recoup the cigarette tax and the prepaid sales tax on the unfit cigarettes.

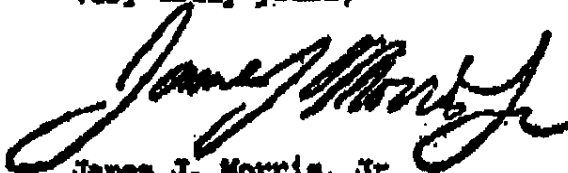
An exchange transaction should receive similar treatment except that there would be no claim for refund by the agent unless and until the exchanged cigarettes become unfit and unsaleable.

In a return situation where something other than cigarettes are exchanged or in a cancelled sale and return of merchandise, for the immediate period after 9/1/95 for cigarettes that were in the possession of a retailer, the agent must determine whether prepaid sales tax is included in the returned cigarettes and be sure not to claim a refund of the prepaid tax if one is not due. (This might occur since cigarettes in the possession of a retailer on 9/1/95 are not subject to the floor tax.)

We expect that you will share the above information with your members and ask that if they have questions they be directed to the Department's Business Tax Information Center at 1 800 972-1233.

If you have any questions regarding the information provided or on other matters, I can be reached at 518-457-0346.

Very truly yours,



James J. Morris, Jr.
Tax Regulations Specialist II

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